

Appl. No. : 10/749,100
Filed : December 30, 2003

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REMARKS

In response to the Office Action mailed August 9, 2006, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 1-8 and 10-19 remain pending. Claim 1 has been amended. Claim 9 was canceled by a prior amendment.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined or enclosed in [[double brackets]].

Claim 1 Is Not A Product-By-Process Claim

Claim 1 presently stands rejected under 35 U.S.C. § 102(b) as being anticipated by the Hayes lever assembly disclosed by the Applicant in the IDS filed July 20, 2006. Applicant respectfully submits that Claim 1, in the form prior to the present amendment, and amended Claim 1 are allowable over the Hayes reference and requests reconsideration of the same.

The Examiner has taken the position that Claim 1 is a product-by-process claim and that the product itself is anticipated by the Hayes lever. Applicant respectfully disagrees. Former Claim 1 recited a control lever assembly including, among other limitations, a control lever defining a mount portion and an upper shaft portion and lower shaft portion extending from respective upper and lower surfaces of the mount portion. The upper shaft portion and lower shaft portion *are configured to be removable from, and capable of reassembly to*, the mount portion. With such a structure, the upper and lower shaft portions may be removed by the end user of the control lever assembly to permit maintenance, repair or replacement of the control lever. In contrast, the Hayes lever is of a "throw-away" construction in which the lever pivot pin is not removable and replaceable. Thus, it is not possible for the end consumer to maintain, repair or replace the Hayes lever.

Contrary to the Examiner's position, the limitation that the upper and lower shaft portions *are removable from, and capable of reassembly to*, the mount portion describes a distinctive structural characteristic of the control lever assembly. The final product (i.e., the control lever assembly) includes upper and lower shaft portions that are removable and replaceable relative to the mount portion. This structural characteristic is not disclosed or suggested by the Hayes lever. For at least this reason, Applicant submits that the rejection of Claim 1 is improper.

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However, in order to expedite allowance of the present application, Applicant has amended Claim 1 to clarify that the removability of the upper and lower shaft portions is a structural characteristic. In particular, Claim 1 has been amended to recite that the upper and lower shaft portions are *removably secured to* the mount portion of the control lever. This recitation is directed to a structural characteristic of the final product and is not a description of the process by which the product is made. Furthermore, Applicant submits that the present amendment to Claim 1 is for clarification purposes and is not a narrowing amendment.

Claims 2-4 depend from allowable Claim 1 and are also allowable on their own merit as well. Reconsideration and allowance of Claims 1-4 is respectfully requested.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 9, 2006

By: 

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